THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :9314 of 2007

DATED:19-06-2007

BETWEEN:

Gallinkala Vijaya Laxmi & another.

..... PETITIONERS

AND

The Commissioner of Police,
Visakhapatnam Urban,
Visakhapatnam District & 2 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioners; learned Government Pleader for Home appearing for the respondents 1 and 2; and the learned counsel appearing for the 3rd respondent.

2. Petitioners seek a writ of mandamus declaring the inaction of the respondents 1 and 2 in initiating action pursuant to lodging a report, dated 28-03-2006, and
20-04-2006, as illegal and arbitrary.

3. It is the case of the petitioners that the suit in O.S.No.495 of 1989 filed by the 1st petitioner against the 3rd respondent to declare the title in respect of the house site bearing No.17-B covered by Sy.No.35 situated at Gullalapalem village, Ex-servicemen colony, Malkapuram, Visakhapatnam bounded on the East: plot No.18;
South: road, West: Plot No.15; North: Gadda, was decreed by the IV Additional District Munsif, Visakhapatnam vide judgment and decree, dated 16-06-1995, declaring that the plaintiff is the original owner of the said property and the defendant, who was the husband of the 3rd respondent, has no title whatsoever over the said property and accordingly the said defendant was directed to remove the structures made in the plaint schedule property within three months failing which the plaintiff is at liberty to remove the

same. It is stated that the said decree and judgment have been confirmed in A.S.No.175 of 1995 on 03-06-1999 by the II Additional District Judge, Visakhapatnam, and also in S.A.No.590 of 2001 on 13-07-2001. Thereafter, petitioner filed E.P.No.15 of 2003 in O.S.No.495 of 1989 on the file of the
IV Additional Junior Civil Judge, Visakhapatnam and possession was delivered on 30-01-2006. When there was an apprehension of trespass a representation has been made on
28-03-2006 and thereafter when the 3rd respondent and her henchmen have trespassed into the land a written intimation has been made on 20-04-2006 but the police have not registered any case. Hence, the present Writ Petition.

4. Learned counsel appearing for the 3rd respondent submits that the 3rd respondent is an allottee of plot
No.17 whereas the petitioner is the allottee of plot No.49. There is no plot No.17-B and there is a dispute with regard to the identity of the property and the 3rd respondent is in possession of plot No.17 only but not 17-B.

5. Counter has been filed on behalf of the
respondents 1 and 2 stating that pursuant to the written information furnished by the petitioner the same was entered in the general diary but on *prima facie* enquiry the averments were not established and the dispute being civil in nature and as the 3rd respondent filed E.A.No.127 of 2006 in E.P.No.15 of 2003 in O.S.No.495 of 1989 for re-delivery of the possession no action has

been taken, however, a case in Cr.No.95 of 2006 was registered under Sections 447, 427, 341 r/w 34 IPC on 18-05-20-6 i.e., after filing the Writ Petition.

6. Learned counsel appearing for the petitioners submits that the concerned Station House Officer, Malkapur police station, Visakhapatnam is not conducting investigation honestly and sincerely, and in collusion with the 3rd respondent he has filed a report stating that the nature of the complaint is civil in nature. It is stated that as the petitioners have no trust and belief in the investigating Agency-concerned Station House Officer, they filed a private complaint but the learned Magistrate is not conducting enquiry independently, and even such reports are being referred to investigation and report by the self-same police.

7. Under Section 210 Cr.P.C. when a private complaint is filed even though investigation is pending by the police the concerned Magistrate while staying the private complaint calls for the report from the concerned police. Therefore, I am of the opinion that in the instant case as the police have already taken a decision to refer the matter as civil in nature, if any such report is filed referring the case as civil in nature, it is for the concerned Magistrate to consider the private complaint and take appropriate action in accordance with law without referring the same to the self-same investigating officer.

8. Accordingly, the Writ Petition is disposed of as indicated above. It is open for the petitioner to take appropriate action before

the concerned criminal Court. No order as to costs.

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V.ESWARAIAH,J

19th June, 2007.

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